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SECTION 403, INDIAN PENAL CODE—A MISPRINT.

We have received a communication from the Additional Secretary and Draftsman, Government of India, Legislative Department (Mr. J. Bartley) drawing our attention to a strange misprint occurring in the official reprints of the Indian Penal Code issued in 1909 and thereafter, and which possibly occurs also in earlier re-prints. The letter states:—

"The third and last paragraph of the second Explanation to section 403 of the Code, as passed by the Legislature, runs:—

'It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found'.

At some subsequent reprinting of the Act the underlined word was re-produced as 'believes'. The result is to convey the opposite of what the Legislature really enacted."

It is quite likely that in many of the annotated editions of the Penal Code, which naturally would have adopted the official version of the text of the Code, the mistake has been reproduced, as in fact it has happened in some of the books, as Mr. Bartley's letter points out. Now that the error has been brought to light we are sure that the necessary correction will be made by our readers in their copies.

MITAKSHARA JOINT FAMILY LAW—ALTERATIONS SUGGESTED.

A member of the Madras Judicial Service writes to us:

"The institution of joint family under the Mitakshara school of Hindu law has outlived its useful purpose, and at the present day it is a source of heart-burning and costly litigation. The health of any system depends on its ability to get rid of such waste matter speedily. Hence Hindu society should get it abolished by legislation, as courts look only to precedents, the earliest being considered to be the best. Legislation cannot and need not put an end to the joint family itself but it can put an end to some of the harmful legal incidents thereof, such as (1) survivorship, (2) pious obligation to pay one's father's debts, (3) capacity of a father or manager to contract debts and to alienate properties so as to bind other major persons even against their wishes.

I propose the following as model sections, of course to be improved upon by more capable hands.

(1) 'On and after (a fixed date) members of joint families governed by the Mitakshara school of Hindu law shall be entitled to their respective shares in joint family property in severalty as tenants-in-common and not as coparceners or as joint tenants.

(2) 'Debts contracted and other financial obligations incurred and alienations of property made on and after (the fixed date) by any member of a joint Hindu family, even if he is a manager or father, shall not be binding on the shares of the other members of the family in joint family property except under the law governing guardians and their wards and principals and agents'."

The Mitakshara joint family system has had shattering blows dealt to its integrity in the past, both by legislation like the Hindu Gains of Learning Act (XXX of 1930) as well as under case law countenancing theories like the doctrine of unilateral declaration leading to a severance in the joint status, the alienability by a co-parcener of his undivided share in Madras and Bombay, for value, etc. In regard to the doctrine of pious obligation also there have been changes making it more suitable to modern conditions. In the words of Coutts Trotter, C.J., in *Achutan* v. *Ratnaji*,[1] "it has been controlled and moulded into shape by a series of decisions which . . . . . . make it a working rule which in its actual application is neither inconvenient nor unjust". No doubt in a later case, *Subramania* v. *Sabapathy*[2] the same learned Chief Justice expressed the opinion that the doctrine is an illogical relic of antiquity unsuited to any but a primitive and patriarchal society, but in fairness it has to be noted that the remark was made in connection with what he thought was an attempt at extending the scope of the doctrine. Anyway the doctrine is a logical sequel to the theory of right by birth and so long as the latter principle rules there will be nothing illogical in retaining the pious obligation rule also. One thing is clear, that Hindu law ought not to be changed piecemeal by periodical nibblings at it. As regards the abolition of a manager's power to sell in the way proposed, such a change in the law might require re-adjustment of the principles regarding liability of joint family property for maintenance, marriage expenses of the unmarried female members of the family, etc. Now that a special committee has been constituted to examine the entire Hindu law with a view to its codification we are sure that suggestions like those made *supra* will receive the fullest consideration.

WHEN STATE SHOULD BE LIABLE FOR COSTS.

Interesting suggestions were made by Mr. Roland Marshall, President of the Incorporated Law Society, Liverpool in an address delivered by him sometime back to that society. One of them was that where a litigant wins in the first Court but loses on appeal it is not fair to make him bear the entire costs; it is rather the state that should bear the costs of the first Court. The suggestion seems to proceed on the view that the reversal of the first Court's judgment is in the ultimate analysis attributable to some failing of the state, probably in not selecting a person whose opinion will always be sustained on appeal. Even Homer nods and it is very doubtful whether the public will ever reconcile themselves to the state paying the costs of what after all is the result of ordinary human fallibility.

Another proposal was that the costs of litigation relating to the obtaining of decisions on doubtful or obscure points arising under statutes should be borne by the state on the fiat of the Attorney-General and subject to proper safeguards and that the same procedure might be applied to litigations of general public importance. It is interesting to re-call in this connection how in *Roe* v. *Russel*[3], Scrutton L.J., regretted that he could not direct the costs in that case to be paid by those responsible for the drafting of the Act there in question and its passing. That the costs of litigation are heavy has often been stated. The desirability of reducing the same has also been conceded. It must go some way towards such reduction if at least in the cases where questions of public importance or construction of doubtful statutory provisions are involved the state could bear a share of the costs as suggested by Mr. Marshall.

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1. (1925) 50 M.L.J. 208: I. L. R. 49 Mad. 361 (F.B.).
2. (1927) 54 M.L.J. 726: I. L. R. 51 Mad. 211.
3. (1928) 2 K.B. 117.